

| Provider Agency | Other |
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| <p>DIDD should at least match the \$38 Nursing rates of the MCO/ECF.</p> <p>DIDD should emulate the ECF VR program to increase staffing resources.</p> <p>Tribal Government rates FAR exceed the TN State rates.</p> <p>Thank you for sharing your comments.</p> <p>No changes are proposed with respect to Nursing services or reimbursement as part of these renewals and/or amendment, as applicable.</p> <p>Please note, however, that in ECF, nursing services are consultative in nature:</p> <p><i>Expertise, training and technical assistance in one or more specialty areas (behavior services, occupational therapy, physical therapy, speech language pathology, nutrition, orientation and mobility, or nurse education, training and delegation) to assist paid or natural or co-worker supports in supporting individuals who have long-term intervention needs, consistent with the person-centered support plan, therefore increasing the effectiveness of the specialized therapy or service. This service also is used to allow the specialists listed above to be an integral part of the person-centered planning team, as needed, to participate in team meetings and provide additional intensive consultation for individuals whose functional, medical or behavioral needs are determined to be complex. The consultation staff and the paid support staff are able to bill for their service time concurrently. Specialized Consultation and Training shall not include the ongoing provision of direct services. Activities that are covered include:</i></p> <ol style="list-style-type: none"> <i>1. Observing the individual to determine and assess functional, medical or behavioral needs;</i> <i>2. Assessing any current interventions for effectiveness;</i> <i>3. Developing a written, easy-to-understand intervention plan, which may include recommendations for assistive technology/equipment, workplace and community integration site modifications; the intervention plan will clearly define the interventions, activities and expected timeline for completion of activities;</i> <i>4. Identification of activities and outcomes to be carried out by paid and natural supports and co-workers;</i> <i>5. Training of family caregivers or paid support personnel on how to implement the specific interventions/supports detailed in the intervention plan; in the case of nurse education, training and delegation, shall include specific training, assessment of competency, and delegation of skilled nursing tasks to be performed as permitted under state law...</i> <p>Also note that Tennessee does not have any recognized tribal governments.</p> | |
| Seating and Positioning Clinic in TN | Please provide your comments regarding changes in cost limits/caps and regarding rate changes and access to individual employment supports. |
| I feel that the caps need to be expanded, they are too low. | |
| Thank you for your comment. The caps (or cost limits) in the Statewide and Self-Determination waivers are modified as part of the proposed changes in the waiver renewal or amendment, as applicable, to ensure that | |

persons supported are not adversely impacted by any changes in the reimbursement methodology for services and to ensure access to individual employment supports.

No other changes in the cost limits are proposed at this time.

Affordable Housing Landlord for Special Needs Populations

Other; Page 13

Regarding residential services and scope policies on page 13. What assurances will be in place for individuals who reside in provider owned or controlled homes if they choose a new service provider? Will the individual be required to move from the provider owned/controlled property? Many states are requiring that the residence is or controlled or owned by the service provider and/or the service support administrator responsible for their ISP planned services to avoid the conflict of interest.

Specifically Residential Habilitation services shall be provided in a dwelling which may be rented, leased, or owned by the Residential Habilitation provider, and shall comport fully with standards applicable to HCBS settings delivered under Section 1915(c) of the Social Security Act, including those requirements applicable to provider-owned or controlled homes, except as supported by the individual's specific assessed need and set forth in the person-centered ISP.

What measures are being developed to work with independent affordable housing landlords for rental properties independent of the service provider organization?

Thank you for sharing your questions and concerns. No changes are proposed with respect to Residential Habilitation housing protections as part of this proposed amendment. All settings in which services are provided under these waivers must comport fully with standards applicable to HCBS settings delivered under Section 1915(c) of the Social Security Act, including those requirements applicable to provider-owned or controlled homes. The person supported cannot be required to move out of the provider-owned/controlled home if they decide to receive services from another provider, and it is the responsibility of the two provider agencies to coordinate supports.

The state has collaborated with the Tennessee Housing Development Agency (THDA) to educate people supported, providers, and family members about housing vouchers and assistance programs available.

HCBS Provider

Please provide your comments regarding Employment and Day Service Definition Clarifications; Page 14

My comments are related to the Residential Special Needs Adjustment-Homebound (section d) description. I find the qualifications for RSNA-HB much too restrictive. As someone who has worked in the field of Intellectual Disabilities for 18 years I can honestly say there are persons supported who are unwilling to leave his/her home regardless of the efforts of the provider to guide the person into the community. It is unfair to the provider to have to absorb expenses associated with caring for a person supported who chooses not to participate in the community. As a result the provider will be denied reimbursement because the person supported won't meet the 2-hour minimum because he/she will exercise the right of choice, which incidentally, is a core value of the HCBS rules.

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| <p>Thank you for sharing this perspective. The proposed changes are designed to offer greater flexibility to persons supported and to providers. They are also designed to ensure compliance with the federal HCBS Settings Rule—to ensure that persons supported have every opportunity to fully participate in community life, and not to be isolated or “institutionalized” in their own homes, regardless of the person’s age or disability. If a person receives residential services and chooses to stay home without leaving for at least two hours in a day and does not qualify as homebound to receive the RSNA-HB, it would then be the provider’s responsibility to determine the amount of support the person needs during the hours they are at home. Not everyone needs 24/7 services. Some individuals may be able to be independent for part of the day or could be supported with enabling technology that would minimize the need for paid staff during some hours. DIDD person-centered support teams will be available to work with providers and with individual circles in exploring potential solutions on a person-by-person basis. With the new day services, a person who chooses to participate in community activities for at least two hours a day would now be able to use the new Community Participation Supports service in combination with the Intermittent Employment and Community Integration Wraparound Support service. This means the person will have the choice to spend more limited periods in the community and spend part of the day at home, while still allowing for billing of each service at the appropriate level. To be clear, a person can choose to spend their <i>entire</i> day at home; however, the Intermittent Employment and Community Participation Wraparound service would not be a billable service in that situation.</p> | |
| Council on Developmental Disabilities | Please provide your comments regarding changes in cost limits/caps, rate changes, and access to individual employment supports; Page 28 |
| The Council strongly supports this effort to remove barriers to employment. | |
| Thank you for your support. This aligns with our shared commitment to <i>Employment First</i> . | |
| Council on Developmental Disabilities | Please provide your comments regarding changes in cost limits/caps regarding rate changes and access to individual employment supports, the 24-hour clarification in the residential services definitions, and Other; Pages 8-9, 13, 28 |
| <p>The Council strongly supports efforts to remove barriers to employment.</p> <p>The Council strongly supports the new language supporting the individual to spend time alone and use enabling technology.</p> <p>With regard to monitoring the HCBS Settings compliance at the individual level and provider level (pages 8-9), the Council encourages the TennCare LTSS team do a limited but regular number of on-site reviews and interviews, e.g. 5-10 visits annually, chosen at random. The level of insight and knowledge of the LTSS staff after Heightened Scrutiny was invaluable.</p> | |
| Thank you for your support. We will take your suggestion into consideration. We agree that direct observations from Heightened Scrutiny reviews were invaluable. | |
| Family Member/Representative | Other; Page 6 |
| Many companies and employers provide vacation, sick days, and leave of absences that allow employees to be away from work, with pay. I would like some consideration to be given for people with intellectual disabilities to use some FB days for times when they are not feeling well. All facilities should have a program | |

that serves the client's needs. Also, a maximum number of days would need to be established. Smarter minds than mine are required to establish the details. Thanks for your consideration.

Thank you for your comments. It is important to note that these rules concern how a provider is paid to support a person with intellectual disabilities; they do not restrict a person's choice regarding how to spend their day. Facility Based Day supports may be provided only when selected by a person supported who needs time-limited pre-vocational training, when such training is not available on the job site, and to persons who, through their person-centered planning process choose to participate in a facility based program in order to focus on the development of individualized and specific skills that will support them in pursuing and achieving employment and/or community living goals. If a person does not feel well enough to go to work or go out into the community, they have the option to stay home and should not be expected to participate in Facility Based Day. Also important is that calculation of staff costs for these rates takes into account twenty (20) annual days of payment to cover absences of the person supported, regardless of reason.

Family Member/Representative

N/A

It is all so overwhelming to a parent that I cannot begin to comment. I have no idea what kind of a waiver my daughter is on. She CANNOT speak for herself and therefore, it is NOT a person-centered program. It has gotten more and more complicated. What was 5 years ago a wonderful facility-based program for my daughter has turned into day after day of wandering through Thrift Stores, Dollar General, Walmart, etc., and sitting on park benches on in the EXTREME HEAT, SNOW, POURING RAIN, ETC. Some of this community participation is good but parading these people through stores when these clients have NO money to buy anything is cruel. And six hours a day. I guarantee that most normal adults don't shop 30 hours a week, especially when they have no money to buy anything. The push for employment is fine for those capable of working, but my daughter has up to 10 seizures a day, is legally blind, speaks little and has an IQ of 29. This doesn't make her eligible to be employed. And now it is my understanding that they may have to be taken out a sixth day? For what reason?

Thank you for sharing your comments and concerns.

The purpose of Community Participation Supports is to encourage *opportunities* for people supported to be engaged in their communities in a meaningful way, to the same extent that people *without* disabilities/not receiving services do. Providers and their staff are expected to have conversations and interactions, using various methods of communication, with people supported on a regular basis to determine what their preferences are in terms of activities, events, and places they want to participate in and visit in their communities. There is no requirement on the number of days that a person must be outside of the home or the number of hours per day. As part of the day and employment changes, providers will no longer be required to have people receiving Day Services in the community for 6 hours in order to bill; the changes to the billing structure will allow for providers to bill in 15 minute unit increments, which will give providers the flexibility to deliver services in a way that supports the choices and preferences of the person supported in terms of how they want to spend their day.

The changes for Employment and Day Services are designed to encourage not just providers, but everyone involved in the service delivery system, to keep an open-minded and optimistic approach to discovering and inspiring the skills, abilities, and interests of people supported and ways in which they can be used to achieve integrated employment goals. Many people receiving services have historically not been provided opportunities to explore employment outside of segregated facility-based settings. While each person must choose his or her own goals related to employment, the over-arching goal is to increase our expectations for *all* people supported, so that no one's strengths and skills will be overshadowed by assumptions that they are not eligible for or capable of employment.

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| Implements State program for employing people with disabilities | Please provide your comments on the Employment and Day Service definition clarifications; Page 4 |
| <p>COMMENTS SUBMITTED BY COMMUNITY REHABILITATION AGENCIES OF TENNESSEE (CMRA) ON THE PROPOSED REVISIONS FOR THE 1915(C) HCBS WAIVER PROGRAM</p> <p>CMRA is the central nonprofit agency designated by the Advisory Committee for Purchase from the Blind and Other Severely Disabled to implement the statute found at Title 71, Chapter 4, Part 7, Tennessee Code Annotated. These comments are directed at the following proposed waiver revision: "Supported Employment-Individual Employment Support These services do not include supporting paid employment or training in a business enterprise owned or operated by a provider of these services. Tennessee Department of Transportation rest areas, operated by a provider as part of State Use Program, where individuals employed are earning at least minimum wage and not working in a group, are excluded from this requirement. Contracts operated by a provider as part of a State Use Program are prohibited; however, those individuals who are currently employed through a State Use Program may continue employment until the contract expires or the person loses the employment for any other reason, at which point, employment through any State Use Program is not an option." This revision disallows employment through a State Use Program. State Use Program is not defined by the Waiver. Wisconsin's description of its State Use Program is typical and is set forth below: "What is the State Use Program? In 1989 the State of Wisconsin legislature crafted an innovative piece of legislation called the State Use Law. The law directs state agencies to purchase products and services from Wisconsin's certified work centers employing persons with severe disabilities. As a result, the State Use Program was created to administer the law that provides state agencies with a fair price, good quality and on-time delivery. What Does the State Use Program Do? The State Program combines the purchasing power of Wisconsin government with the rehabilitation employment of the non-profit work centers. The State Use Program seeks to maximize Wisconsin state agency contracting with certified work centers by requiring all agencies to contract with a certified work center when the work center is able to meet specifications and provide a product or service at fair market value."</p> <p>https://doa.wi.gov/Pages/StateEmployees/StateUseProgram.aspxThe statute administered by CMRA began as a State Use Program. However, the statute has evolved over the years and no longer qualifies as a State Use Program. As set forth below, the employment is required to be in the community and integrated. Implementation of the statute is overseen by a committee composed of representatives of the departments of finance and administration, general services, human services, mental health and substance abuse services, and intellectual and developmental disabilities. Additionally, the committee is composed of a representative of a nonprofit work centers for the blind, a representative of a nonprofit agency serving individuals with severe disabilities, and a representative of the business community. CMRA recommends contracts for services and commodities to the State and political subdivisions. 51% of the direct labor hours on the contracts are required to be provided by people with disabilities. The employment is required to be integrated which is defined by the statute as: "a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons;" State entities and political subdivisions are required to contract with CMRA where the commodities or services meet their reasonable requirements. The contracts are required to be certified pursuant to procedures developed by the Central Procurement Commission. The Central Procurement Commission designated a certification committee composed of a representative of the Comptroller of the Treasury, the Departments of Finance and Administration, and the Department of General Services, to certify the contracts. Additionally, CMRA contracts with JLL to provide janitorial and landscape services for facilities managed by it. To fulfill its contracts, CMRA subcontracts with vendors. The vendors are required to employ people with disabilities in integrating settings. CMRA contracts with both for</p> | |

profit and not for profit companies. CMRA subcontracts with the following for profit companies to fulfill its contracts: Taylor Manufacturing to manufacture and distribute customized printed forms, Liquid Environmental to clean grease traps, Woodard Bros Distributing to purchase and distribute drug testing kits, and CMS to provide janitorial services. Furthermore, the revision would not support providers contracting to service Tennessee Department of Transportation rest areas. Most rest areas are serviced by providers. The rest areas employ more people than any other contract. The people with disabilities working in the rest areas include an attendant who is available to interact with the public. Typically, the attendant is an individual with an intellectual disability. The legislature created the program administered by CMRA to employ people with disabilities on government contracts. The proposed waiver revision would effectively undercut the legislative objective for a class of people with disabilities, those with intellectual disabilities. This revision is not removing people from workshops to employment in the community. CMRA contracts for real jobs in the community that must be filled either by CMRA or by another vendor. If CMRA does not fulfill the government contracts, then they are put out for bid and fulfilled without the employment of people with disabilities. The question is whether TennCare will support the government's program to fulfill the jobs with people with disabilities.

Thank you for sharing your concerns.

We appreciate the programs established under TCA 71-4-701 et. seq. nearly 30 years ago with the intention of providing for employment of people with disabilities, and the work that CMRA has done to implement this statute and to make these opportunities available. I suspect that the Tennessee law was modeled after comparable federal legislation, the Javits-Wagner-O'Day Act of 1971, (41 U.S.C. 46 et seq.) which provides government-wide authority for noncompetitive acquisitions of supplies (e.g., parachute equipment, note pads) and services (e.g., food service, custodial, and grounds maintenance) produced by nonprofit agencies employing people with disabilities.

Employment policy for people with disabilities has evolved significantly since that time. As recognized in a recent U.S. Senate report issued by the United States Senate Committee on Health, Education, Labor, and Pensions entitled *Disability Employment: Outdated Laws Leave People with Disabilities Behind in Today's Economy* (available at: <https://www.murray.senate.gov/public/cache/files/84084732-e011-470a-b246-1cdab87755c3/staff-report-on-employment-for-people-with-disabilities-10-29-2018-pm-.pdf>), *"The AbilityOne program [the comparable program authorized by the federal legislation] represents an antiquated model of disability employment that was created 80 years ago when there was little expectation that people with disabilities—let alone people with significant disabilities—could be contributing members to our economy and our community by earning competitive wages alongside their peers without disabilities. Moreover, subminimum wage payments to people with disabilities, including at AbilityOne contractors, is government sponsored discrimination that is inconsistent with modern disability employment policy."*

This is actually underscored by Tennessee's own statute which defines persons with severe disabilities—the target population employed under this statute as follows: 71-4-702(5) *"Individuals with severe disabilities" means an individual or class of individuals with a physical or mental disability other than blindness, which, according to criteria established by rules approved by the committee for purchase from the blind and other severely disabled, after consultation with appropriate entities of the state and taking into account the views of nongovernmental entities representing the disabled, constitutes a substantial impediment to employment and is of such a nature to prevent the individual with such a disability from currently engaging in regular competitive employment* [emphasis added],” If the stated intent of the State's program is to serve people whose disabilities prevent them from engaging

in competitive employment, an effective argument cannot be made that the program itself offers competitive employment.

Ultimately, Provider contracts authorized pursuant to TCA 71-4-701 et. seq. are inconsistent with federal *Employment First* policy. As an *Employment First* State (see Executive Order #28 which directs state agencies to “coordinate to increase opportunities for integrated and competitive employment for individuals with intellectual and developmental disabilities”), TennCare and DIDD share an obligation and a commitment to ensuring that the programs under which Medicaid home and community-based services are provided are consistent with an *Employment First* approach.

The purpose of this policy change is to encourage and increase opportunities for competitive integrated employment in the community, meaning they are offered to and held by people supported in the same way as people *not* receiving waiver services. While support for integration in employment settings is a significant part of these changes, promoting equitable employment experiences for people supported (i.e., compensation, the nature of the employer-employee relationship) is also an important objective that facilitates greater inclusion and equality for people receiving services.

Based on your comments, we will update the language referencing State Use Programs with the following: *However, those individuals who are currently employed by a provider to fulfill a contract authorized pursuant to TCA 71-4-701 et seq. may continue to receive supporting paid employment or training until the contract expires or the person loses the employment for any other reason. At which point, no further supporting paid employment or training will be provided for the contract owned or operated by a provider.*

Advocacy Organization

Please provide your comments regarding changes in cost limits/caps regarding rate changes and access to individual employment supports; Pages 28-29

The Arc Tennessee recognizes that individuals currently enrolled in the DIDD Self-Determination Waiver who can no longer be safely supported through this program may need to transition to the Employment and Community First (ECF) CHOICES program to receive those additional supports. However, we are concerned that individuals who present with a high level of need may be diverted unnecessarily to ICF-IDs simply because the individual is not seeking employment or to keep an MCO within their capitated funding. While The Arc Tennessee believes that the majority of people with I/DD can work, there may be some for whom it is not a viable option. Families need to be fully educated on what ECF CHOICES has to offer and not feel pressured to seek employment simply to get the other services they need. We do not want to see an increase in ICF placements for people who can be safely supported in the community. We would like to see regular reports on the number of ICF placements once this change goes into effect.

Thank you for sharing your concerns. Since 2016 when Employment and Community First CHOICES was implemented, individuals enrolled in the Self-Determination Waiver who can no longer be safely supported in that program have been directed to Employment and Community First CHOICES. This amendment does not propose any changes in that regard. The only changes as it relates to cost limits are to ensure that persons supported are not adversely impacted by any changes in the reimbursement methodology for services and to ensure access to individual employment supports.

Employment and Community First CHOICES provides comprehensive benefits for people with high levels of need, including individuals would otherwise qualify to be served in an ICF/IID. Further, enrolling in Employment and Community First CHOICES does not require that a person seek employment. Also important

is that the total amount of services available to a person with ID and exceptional needs who is enrolled in Employment and Community First CHOICES is *exactly* the same as it would be in the Statewide Waiver.

Initially upon implementing the new program, we did see some individuals who transitioned directly from the Self-Determination Waiver to an ICF/IID. This was largely because of misunderstandings and miscommunication (not unlike those above) regarding their ability to receive the level of supports needed in the new program. By the time TennCare learned about these transitions, the persons had already been admitted to the ICF/IID and it was too late to divert to Employment and Community First CHOICES. TennCare and DIDD have worked closely to correct these misunderstandings, such that many people have now successfully transitioned from the Self-Determination Waiver to Employment and Community First CHOICES. Some people have in fact moved *from* ICFs/IID *to* Employment and Community First CHOICES.

We are happy to work with the Arc Tennessee to continue to correct what seems to be a persistent misunderstanding about Employment and Community First CHOICES as it relates to serving people with higher needs.

Advocacy Organization

Other; Pages 4, 9, 19, 23, 28, 29, 30

HCBS Waiver Renewal Comments

The new Provider Manual is referenced throughout; the new Provider Manual needs to be approved and released before these changes can accurately be commented on.

Supported Employment-Individual Employment Support State Use program (pg. 4)- “These services do not include supporting paid employment or training in a business enterprise owned or operated by a provider of these services. Tennessee Department of Transportation rest areas, operated by a provider as part of State Use Program, where individuals employed are earning at least minimum wage and not working in a group, are excluded from this requirement. Contracts operated by a provider as part of a State Use Program are prohibited; however, those individuals who are currently employed through a State Use Program may continue employment until the contract expires or the person loses the employment for any other reason, at which point, employment through any State Use Program is not an option.” Leave it as written and do not strike section from the definition, and do not add the new verbiage.

Intermittent employment and community involvement -As a person-centered state, we need to allow the person through their ISP/POC to control what their day should look like.

Appendix C C-5 HCBS (page 9) “An assessment of each person’s experience is embedded into the person-centered planning process on an ongoing basis to ensure that services and supports received by that person are non-institutional in nature, and consistent with the requirements and objectives of the HCBS settings rule.” What assessment? Can this be shared and discussed with providers? This assessment should be identified in exact measures how it will be used and what it will entail. Also, what will the review process for the assessment look like: what strategies, actions and or input will come from the department to providers? Assessment should be reviewed and reflect input from the COS.

The following sentence that is used in all service model definitions: “Providers are responsible for providing an appropriate level of supports, including enabling technology, paid staff, and natural supports.....” Should be replaced with the following: “Providers are responsible for providing an appropriate level of supports, including enabling technology that has been provided by an appropriate level of funding for staffing and equipment, paid staff and natural supports.....”

Family Model Two definitions of non-allowable family involvement, one on page 15 and one on 17: what family definition will be used?

Supported Living (pg. 19) “The person supported (or the parent, guardian, or conservator acting on behalf of the person supported) shall have a voice in choosing the individuals who reside in the Supported Living

residence and the staff who provide services and supports.” The wording should be changed from have a voice too, should be able to provide input.

Appendix D D-1 and D-2 (pg. 23) “A person assessed to have level of need 4, 5, or 6 for purposes of reimbursement requires a minimum of at least one monthly face-to-face contact across all environments and in the person’s residence at least quarterly” One face to face contact across all environments changed to: any environments

Pg. 28 TNCO appreciates the attention to the need for increased DSP wages.

Pg. 29 TNCO appreciates “In addition, to ensure compliance with the Rule, a person may be permitted to exceed the cost limit when additional Supported Employment- Individual Supports are requested and utilized.”

D-1 Service plan development (pg. 30) “The identification of individual risk factors through the administration of a uniform risk assessment....” Uniform risk assessment? Is this a new tool? If so, we would like to review and have input on development of said tool.

Thank you for sharing your comments, questions, and suggestions. [State responses are below in blue text beside of each corresponding comment.](#)

The new Provider Manual is referenced throughout; the new Provider Manual needs to be approved and released before these changes can accurately be commented on.

[Applicable changes consistent with these changes will be incorporated into the Provider Manual and will be made available for Public Comment.](#)

Supported Employment-Individual Employment Support State Use program (pg. 4)- “These services do not include supporting paid employment or training in a business enterprise owned or operated by a provider of these services. Tennessee Department of Transportation rest areas, operated by a provider as part of State Use Program, where individuals employed are earning at least minimum wage and not working in a group, are excluded from this requirement. Contracts operated by a provider as part of a State Use Program are prohibited; however, those individuals who are currently employed through a State Use Program may continue employment until the contract expires or the person loses the employment for any other reason, at which point, employment through any State Use Program is not an option.” Leave it as written and do not strike section from the definition, and do not add the new verbiage.

[Please see the State’s response to the CMRA comment above. Provider contracts authorized pursuant to TCA 71-4-701 et. seq. \(State use Programs\) are inconsistent with federal *Employment First* policy. As an *Employment First* State \(see Executive Order #28 which directs state agencies to “coordinate to increase opportunities for integrated and competitive employment for individuals with intellectual and developmental disabilities\), TennCare and DIDD share an obligation and a commitment to ensuring that the programs under which Medicaid home and community-based services are provided are consistent with an *Employment First* approach. The purpose of this policy change is to encourage and increase opportunities for competitive integrated employment in the community, meaning they are offered to and held by people supported in the same way as people not receiving waiver services. While support for integration in employment settings is a significant part of these changes, promoting equitable employment experiences for people supported \(i.e., compensation, the nature of the employer-employee relationship\) is also an important objective that facilitates greater inclusion and equality for people receiving services.](#)

Intermittent employment and community involvement -As a person-centered state, we need to allow the person through their ISP/POC to control what their day should look like.

[We completely agree. The changes put into place via amendments to these waivers submitted in 2018 were intended to create more flexibility for people receiving the services and to providers delivering the services. Once implemented, waiver participants will be able to use their home as their base from which to access](#)

community and employment opportunities as they choose. Also, there will no longer be an expectation that a person receives a full six hours of Employment and Day Services on a particular day in order for the provider to bill for services the person receives. The renewal applications for the Statewide and CAC waivers and amendment to the Self-Determination waiver do not change these expectations in any way. People can control what their day looks like.

Appendix C C-5 HCBS (page 9) “An assessment of each person’s experience is embedded into the person-centered planning process on an ongoing basis to ensure that services and supports received by that person are non-institutional in nature, and consistent with the requirements and objectives of the HCBS settings rule.” What assessment? Can this be shared and discussed with providers? This assessment should be identified in exact measures how it will be used and what it will entail. Also, what will the review process for the assessment look like: what strategies, actions and or input will come from the department to providers? Assessment should be reviewed and reflect input from the COS.

The person-centered planning process for continuous assessment of HCBS compliance will not change as part of this proposed amendment. The Individual Experience Assessment (IEA) is conducted at least annually by the Independent Support Coordinator (ISC)/Case Manager to assess HCBS Settings Rule compliance of services delivered to the person supported. Each question in the IEA relates directly to a requirement of the HCBS Settings Rule. Participants in the IEA include the person and his or her family members and/or representative, as appropriate. The individual’s input is used first, and input from others involved may be used when the person is not able to respond to one or more of the questions independently. Service provider staff may also participate as requested by the person and his or her family and/or representative. Any answers on the assessment that are determined to be non-compliant with the Settings Rule must be addressed by the person’s ISC/Case Manager and/or the provider, as applicable. DIDD submits a quarterly report to TennCare which provides details on each response indicating non-compliance and the remediations taken. The report also shows a percentage of these responses for each service provider which assists in the ongoing monitoring of provider compliance with the HCBS Settings Rule. The Individual Experience Assessment is available at:

<https://www.tn.gov/content/dam/tn/tenncare/documents/IndividualExperienceAssessmentSurveyDIDD.pdf>.

This has been posted on the TennCare website since its implementation. The use of the IEA to help ensure compliance with the federal HCBS Settings Rule was part of Tennessee’s CMS-approved Statewide Transition Plan, which was posted for public comment on multiple occasions prior to its approval and full implementation.

Family Model Two definitions of non-allowable family involvement, one on page 15 and one on 17: what family definition will be used?

The definition of family members who cannot be reimbursed to provide Family Model Residential Support services to a person supported will not change as part of this proposed amendment. The statements on pages 15 and 17 describe the same guidelines for family members that cannot be reimbursed for providing these services.

D-1 Service plan development (pg. 30) “The identification of individual risk factors through the administration of a uniform risk assessment....” Uniform risk assessment? Is this a new tool? If so, we would like to review and have input on development of said tool.

There are no changes being made to the title, format, or utilization of the Risk Issues Identification Tool as part of these proposed renewals/amendment. Document and/or tool titles can change, and the State is trying to avoid waiver amendments each time specific titles of documents may be changed, which is the reason for this generic change in wording.

Advocacy Organization

Please provide your comments regarding changes in cost limits/caps regarding rate changes and access to

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| | individual employment supports, Employment and Day Service definition clarifications, the 24 hour clarification in the residential services definitions, and Other; Pages 29, 4, 13, 3 |
| <p>The Arc Tennessee appreciates and supports that the individual cost cap may be exceeded in situations where the individual needs additional employment supports or the change in the reimbursement rates impacted the amount of services the individual could receive under the current structure. In addition, The Arc Tennessee recognizes that individuals currently enrolled in the DIDD Self-Determination Waiver who can no longer be safely supported through this program may need to transition to the Employment and Community First (ECF) CHOICES program to receive those additional supports. However, we are concerned that individuals who present with a high level of need and may not be able to work may be diverted unnecessarily to ICF-IDs simply because the individual is not seeking employment or to keep an MCO within their capitated funding. While The Arc Tennessee believes that the majority of people with I/DD can work, there may be some for whom it is not a viable option. Families need to be fully educated on what ECF CHOICES has to offer and not feel pressured to seek employment simply to get the other services they need. We do not want to see an increase in ICF placements for people who can be safely supported in the community simply because they may not be able to work or would be costly for an MCO to support. We would like to see regular reports on the number of ICF placements once this change goes into effect to track any unintended consequences of this change.</p> <p>Individual supported employment p. 4; While The Arc Tennessee supports the concept that people with I/DD can and should work to the extent that they are able to, we do not agree with the blanket exclusion of provider employment opportunities from being recognized as a supported employment setting. Unless there is a federal law that we have missed that mandates this change, we are concerned that the elimination of this option will lead to fewer people working instead of more people working. If an individual supported by Agency X is paid by Agency X to perform administrative work in Agency X's administrative office and that individual is being paid a competitive wage, it should be recognized as competitive, integrated employment. In addition, providers that have been innovative enough to develop social enterprises that create jobs for people with ID at competitive wages in an integrated environment should be commended for their innovation rather than have these options excluded from the definition of supported employment. In both these scenarios, it is typically the case that the providers have worked tirelessly to find that traditional "supported employment" or "customized employment" opportunity in the community for the individuals they support. In absence of finding that position or in other cases having found those positions but the individual continues having challenges in keeping them, these other options have created meaningful work opportunities for people supported and should not be completely excluded from the definition. Instead of an across the board elimination of these options, The Arc recommends a process that reviews each situation individual to determine if it meets the criteria for "competitive, integrated employment" and then develop the individual's support plan accordingly.</p> <p>p.4 – Again, while The Arc Tennessee supports the concept that people with I/DD can and should work to the extent that they are able to, we do not agree with a blanket exclusion of state use contracts from being recognized as a supported employment setting. Unless there is a federal law that we have missed that mandates this change, we are concerned that the elimination of this option will lead to fewer people working instead of more people working. CMRA has made conscious effort these past three years to develop state use contracts that do pay competitive wages, do occur integrated settings and are not always "small group" employment. The Arc Tennessee recommends looking at each contract individually rather than assuming none of them will meet the definition of support employment.</p> <p>P13 The Arc Tennessee supports the 24-hour clarification in the residential services definition. We believe that people with I/DD have the right to privacy, time alone, and independence through the use of enabling</p> | |

technology and other natural supports. The appropriate risk assessments should be completed that account for the individual's health and safety needs. Furthermore, it is important to recognize that despite the best planning, independence comes with some level of risk that cannot necessarily be completely mitigated. Providers must be supported in promoting the independence of the people they support and not be blamed for things that happen so long as they followed the approved plan. Natural supports must be recognized for what they are - and there should be no expectation that natural supports be subject to background checks, special training or other requirements that defeat the purpose of it being a natural support.

Non-Residential Homebound Support Services p. 3 - The Arc Tennessee is concerned that the non-residential homebound service does not recognize that there are people who simply do not want to leave their homes and the reason may not be entirely medical. We are dealing with an aging population. Many people who are aging – regardless of whether or not they have a disability, simply are content to spend time at home. It is difficult to state that services are person-centered without acknowledging there are reasons other than medical for not leaving one's home. There must be other viable service options with a reasonable rate of reimbursement for providers in these circumstances so that true person-centered program may be executed.

General Comment The Arc Tennessee has concerns that there is a conflict between "person-centeredness" and the changes to the waivers overall. We strongly support competitive, integrated employment and community inclusion. We believe that people who are capable of working should work. We also realize that what is most important is for the person with I/DD to have enough life experience to make informed choices about what their life should look like. Waiver services should absolutely challenge an individual to have those life experiences so they can make those informed choices. However, at some point we must recognize that an individual has had those "life experiences" and can make informed choices about what he wants his life to [sic] like. He should be supported to live that life through a combination of paid supports, natural supports and technology. We are concerned in general that the needs of an aging ID population are not being fully considered in the overall structure of the waiver services and recommend that there be more of a focus on aging-related services in future waiver renewals.

Thank you for sharing your comments and recommendations.

Since 2016 when Employment and Community First CHOICES was implemented, individuals enrolled in the Self-Determination Waiver who can no longer be safely supported in that program have been directed to Employment and Community First CHOICES. This amendment does not propose any changes in that regard. The only changes as it relates to cost limits are to ensure that persons supported are not adversely impacted by any changes in the reimbursement methodology for services and to ensure access to individual employment supports.

Employment and Community First CHOICES provides comprehensive benefits for people with high levels of need, including individuals would otherwise qualify to be served in an ICF/IID. Further, enrolling in Employment and Community First CHOICES does not require that a person seek employment. Also important is that the total amount of services available to a person with ID and exceptional needs who is enrolled in Employment and Community First CHOICES is *exactly* the same as it would be in the Statewide Waiver.

Initially upon implementing the new program, we did see some individuals who transitioned directly from the Self-Determination Waiver to an ICF/IID. This was largely because of misunderstandings and miscommunication (not unlike those above) regarding their ability to receive the level of supports needed in the new program. By the time TennCare learned about these transitions, the persons had already been admitted to the ICF/IID and it was too late to divert to Employment and Community First CHOICES. TennCare and DIDD have worked closely to correct these misunderstandings, such that many people have now

successfully transitioned from the Self-Determination Waiver to Employment and Community First CHOICES. Some people have in fact moved *from* ICFs/IID *to* Employment and Community First CHOICES.

We are happy to work with the Arc Tennessee to continue to correct what seems to be a persistent misunderstanding about Employment and Community First CHOICES as it relates to serving people with higher needs.

With regard to your comments regarding p. 4, please see the response to the CMRA comments above. While there is no federal law which mandates this change, it is consistent with *Employment First* policy. The predominant goal of the proposed changes to Employment and Day services is to encourage and increase opportunities for competitive integrated employment in the community for people supported, meaning these employment opportunities are offered to and held by people supported in the same way as people *not* receiving waiver services. This philosophy applies to any situation in which the provider employs a person supported, including contracts authorized pursuant to TCA 71-4-701 et seq. While support for integration in employment settings is a significant part of these changes, promoting equitable employment experiences for people supported (i.e., compensation, the nature of the employer-employee relationship) is also an important objective that facilitates greater inclusion and equality for people receiving services.

With regard to your comments regarding p. 13, we agree that supporting independence requires adjustments to ensure that program policies do not inadvertently undermine person-centered program goals. This includes how we identify and mitigate risk while honoring choice and self-determination, handle incidents that may occur, and support relationships with natural supports.

The proposed changes regarding Non-Residential Homebound Supports (NRHBS) and Residential Special Needs Adjustment -Homebound (RSNA-HB) are designed to allow **greater flexibility** to persons supported and to providers. They are also designed to ensure compliance with the federal HCBS Settings Rule—to ensure that persons supported have every opportunity to fully participate in community life, and not to be isolated or “institutionalized” in their own homes, regardless of the person’s age or disability. Just because a person has chosen not to work does not mean that the person wants to stay at home all day. If a person receives residential services and chooses to stay home without leaving for at least two hours in a day and does not qualify as homebound to receive the RSNA-HB, it would then be the provider’s responsibility to determine the amount of support the person needs during the hours they are at home. Not everyone needs 24/7 services. Some individuals may be able to be independent for part of the day or could be supported with enabling technology that would minimize the need for paid staff during some hours. DIDD person-centered support teams will be available to work with providers and with individual circles in exploring potential solutions on a person-by-person basis. With the new day services, a person who chooses to participate in community activities for at least two hours a day would now be able to use the new Community Participation Supports service in combination with the Intermittent Employment and Community Integration Wraparound Support service. This means the person will have the choice to spend more limited periods in the community and spend most of the day at home, while still allowing for billing of each service at the appropriate level. To be clear, a person can choose to spend their *entire* day at home; however, the Intermittent Employment and Community Participation Wraparound service would not be a billable service in that situation.

Family Member/Representative

Please provide your comments on the change of Independent Support Coordinator (or Case Manager) visit requirements; Page 26

Monthly face to face visits should continue for all. Some are new to the ISC. Some individuals have little verbal communication, especially levels 2 and 3. A telephone contact is inadequate. You could only speak with a caretaker. Body language is important. Some waiver individuals tell you what you want to hear, not the truth. Pretending is more easily done by phone.

Thank you for sharing your perspective. The purpose of the proposed changes to Independent Support Coordinator (ISC) visit requirements is to allow more flexibility in service delivery monitoring for the person supported who may not need as many visits, including his or her family, if applicable. An overarching goal of these proposed changes is to facilitate a service delivery environment for people supported and their families that reflects the general experience of people not receiving services, to the fullest extent possible. This means more freedom and choice in the person's day-to-day life and how they want to live it, and less time spent meeting with ISCs as part of the requirements for receiving supports. It is important to note that these visit requirements are *minimum* requirements. Face-to-face contacts shall be conducted *more frequently* at the request of the person supported and his or her family members/representative, as applicable. If a person or their representative is requesting more visits from the ISC than is minimally required, and the ISC is not complying with these requests, the person and/or representative should report this to the ISC Agency and DIDD.

| Advocacy Organization | Other; Page 22 |
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Disability Rights Tennessee (DRT) applauds the Department's commitment to person-centered Individualized Service Plans, as reflected in Proposed Modifications for the January 1, 2020 Renewals of the States Section 1915(c) Home and Community Based Services (HCBS): the Comprehensive Aggregate Cap Waiver & Statewide Waiver and the Self-Determination Waiver Amendment. Particularly, we are encouraged that this renewal maintains the requirement, on page 22, at item c., that "[e]ach person-centered planning process must . . . [r]eflect cultural considerations and use language understandable by the individual." Person-centered planning and service provision is fundamental to the provision of appropriate, effective services. For purposes of this round of comment on the 1915(c) waivers, DRT's focus is on the Deaf and Hard of Hearing population. DRT believes that in order to satisfy this requirement, service providers must provide service recipients who are Deaf or Hard of Hearing with services which meet the enhanced National CLAS (Culturally and Linguistically Appropriate Services) standards developed by the U.S. Department of Health and Human Services (HHS). These standards have been prioritized by CMS but also by its HHS sister entities SAMSHA and ACL.

As such, we ask that the language quoted in the paragraph above be adjusted to say that "[e]ach person-centered planning process must . . . [r]eflect cultural considerations and use language understandable by the individual, which, for Deaf or Hard of Hearing individuals, means comportment with CLAS standards." In the alternative, we ask for the following language: "Each person-centered planning process must . . . [r]eflect cultural considerations and use language understandable by the individual, which, for Deaf or Hard of Hearing individuals, means communication supports that are comprehensive, person-centered and provide supports in all areas of service provision, including but not limited to service planning and implementation, community integration, employment support, personal care, and safety." CLAS standards involve not only the provision of ASL interpreting services but also assistive technology, communication needs assessments by qualified professionals, cultural training for staff, resources for recruiting sign fluent staff, resources for testing fluency of staff, behavioral intervention planning specific to individuals who are deaf, and quality assurance measures that require the licensing departments to always survey these homes for communication supports and related.

Since the reference above is to Appendix D: Participant-Centered Planning and Service Delivery and thus touches directly on ISP-related responsibilities, DRT seeks the addition of similar language in an appropriate portion of the waiver document (for each waiver) to apply to all service delivery components or the inclusion of similar language in each of the service types addressed in Appendix C. Additionally, DRT requests that

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| language be added to B-8 of each waiver to make explicit that ASL as a first language is recognized for purposes of LEP requirements. | |
| Thank you for your comments. While these are substantive proposed new changes that would also go through a public comment process, we appreciate these recommendations. TennCare and DIDD will take your suggestions into consideration and may reach out for further dialogue on this matter. | |
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| Family Member/Representative | Other; Pages 4-6, 8-9 |
| <p>These amendments emphasize being person -centered and encouraging people with IDD to express their choices and for their choices to be respected. However, these new waiver definitions contradict these goals. With the focus only on competitive integrated employment in specific locations, many choices are eliminated. People who are successfully working at their agency will lose their jobs. Providers have often tried all options for finding employment for these people but with no success. Opportunities such as these should not be eliminated. Providers will not be able to adequately support people if they do not receive reimbursement. While people without disabilities may retire, people with IDD will not have that option. As there is an aging population, there are no opportunities for them to choose retirement since providers will not be reimbursed for adequately covering their services. No one should have to work will into their late 60's and 70's unless that is their choice.</p> | |
| <p>Thank you for sharing your concerns. A predominant goal of the proposed changes to Employment and Day services is to encourage and increase opportunities for competitive integrated employment in the community for people supported, meaning these employment opportunities are offered to and held by people supported in the same way as people <i>not</i> receiving waiver services. This philosophy applies to any situations in which the provider employs a person supported. When a person supported is employed and paid by a provider organization that is receiving waiver reimbursement for employment services in addition to receiving labor from the person supported, this employment situation does not meet the definition of true competitive integrated employment. Promoting equitable employment experiences for people supported (i.e., compensation, the nature of the employer-employee relationship) is an important objective of these proposed changes that facilitates greater inclusion and equality for people receiving services. People receiving waiver services absolutely reserve their right to live a retired lifestyle. The proposed changes regarding Non-Residential Homebound Supports (NRHBS) and Residential Special Needs Adjustment -Homebound (RSNA-HB) are designed to allow greater flexibility to persons supported and to providers. They are also designed to ensure compliance with the federal HCBS Settings Rule—to ensure that persons supported have every opportunity to fully participate in community life, and not to be isolated or “institutionalized” in their own homes, regardless of the person’s age or disability. If a person who chooses retirement receives residential services and chooses to stay home without leaving for at least two hours in a day and does not qualify as homebound to receive the RSNA-HB, it would then be the provider’s responsibility to determine the amount of support the person needs during the hours they are at home. The provider will still receive reimbursement for residential supports provided. Not everyone needs 24/7 services. Some individuals may be able to be independent for part of the day or could be supported with enabling technology that would minimize the need for paid staff during some hours. DIDD person-centered support teams will be available to work with providers and with individual circles in exploring potential solutions on a person-by-person basis. With the new day services, a person who chooses to participate in community activities for at least two hours a day would now be able to use the new Community Participation Supports service in combination with the Intermittent Employment and Community Integration Wraparound Support service. This means the person will have the choice to spend more limited periods in the community and spend part of the day at home, while still allowing for billing of each service at the appropriate level. To be clear, a person can choose to spend their <i>entire</i> day at home; however, the Intermittent Employment and Community Participation Wraparound service would not be a billable service in that situation.</p> | |

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| Independent Support Coordinator | Please provide your comments on the change of Independent Support Coordinator (or Case Manager) visit requirements; Pages 23, 25, and 26 |
| <p>These comments are submitted on behalf of Tennessee Alliance of Support Coordinators (TASC), a statewide membership association of providers of ISC services. 1. On pages 23, 25 and 26 (in section D-1; and twice in section D-2), the following text appears: "...through a stratified approach, based on level of support need, as follows: A person assessed to have level of need 1, 2, or 3 for purposes of reimbursement or not receiving any residential or day service requires a minimum of at least one monthly in-person or telephone contact and at least one bi-monthly (every other month) face-to-face contact; at least one visit per quarter shall be conducted in the person's home. A person assessed to have level of need 4, 5, or 6 for purposes of reimbursement requires a minimum of at least one monthly face-to-face contact across all environments and in the person's residence at least quarterly."</p> <p>Comments: TASC understands the intent of this change is to provide a stratified approach to visit requirements; that persons assessed at higher levels of need (4, 5, and 6) in residential services will require monthly face-to-face contact; and that persons at lower levels of need (1, 2, and 3) in residential services; or persons receiving only day services, day services in combination with residential services, or other non-residential types of services may be visited face-to-face bimonthly with phone contacts in the alternate months. However, one of the drafted qualifiers for bi-monthly visits is stated as "or not receiving any ... day service". This leaves unanswered the frequency of contact for persons receiving only day services (no residential service). Our interpretation of the drafted language is that anyone using day services would be required to have monthly visits. We believe the addition of "or day service" was an attempt to categorize services that are not based on level of need, (such as PA, Nursing, therapies, and some day services, etc.). If the intent is for any person using day services to be visited monthly, then there will be only a handful of people who will be eligible for bi-monthly visits across both waivers. If the intent is NOT for any day service to require a monthly visit, then we believe the following language, if adopted, will make clear the intent of stratifying the frequency based primarily on level of need for residential services; as well as based on day services being provided in combination with residential services at differing levels; or when only day or other non-residential services being received; and/or when services are not based on level of need: "A person assessed to have level of need 1, 2, or 3 for purposes of reimbursement for a residential service; and/or receiving a day service or other non-residential types of service regardless of level of need requires a minimum of at least one monthly in-person or telephone contact and at least one bi-monthly (every other month) face-to-face contact; at least one visit per quarter shall be conducted in the person's home when services are provided in the home. A person assessed to have level of need 4, 5, or 6 for purposes of reimbursement for residential services requires a minimum of at least one monthly face-to-face contact across all service environments and in the person's residence at least quarterly."</p> <p>2. Page 25 (section D-2 a.) the last sentence of second paragraph reads: "The frequency of monitoring visits shall be specified in the ISP and may be provided more frequently as needed." Comment: This same sentence was struck through in the other two places (on pages 23 and 26) in which ISC contact frequency appears. We believe the intent was to remove this sentence in this section as well.</p> <p>3. It is noted that descriptions of the requirements for ISC contact frequency appear in three separate places. Comment: To avoid missed edits or unaligned language, we strongly encourage that the final, adopted language be copied and pasted verbatim in all sections in which the language is to appear in the application.</p> | |
| <p>Thank you for your comments and suggestions. The proposed changes to ISC visit requirements places primary emphasis on level of need, then type of service: "A person assessed to have level of need 1, 2, or 3 for purposes of reimbursement for a residential service <u>OR</u> not receiving any residential or day service reimbursed based on level of need requires a minimum of at least one monthly in-person or telephone</p> | |

contact and at least one bi-monthly (every other month) face-to-face contact...” Therefore, frequency and method of ISC visits for people who are receiving **ONLY** Day Services will be based on the person’s level of need. For example, if a person is assessed at a level of need 2 and is receiving **only** Day Services, the ISC will be required to conduct at least one monthly in-person or telephone contact and at least one bi-monthly face-to-face contact.

Thank you. We will remove the sentence regarding frequency of monitoring visits shall be specified in the ISP.